



**Masidza (Suing as the widow and personal representative of the Late Clement Festus Masidza - Deceased) v Wafula & 4 others (Environment and Land Miscellaneous Application E016 of 2022) [2022] KEELC 15077 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15077 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E016 OF 2022  
EC CHERONO, J  
NOVEMBER 24, 2022**

**BETWEEN**

**LEAH EGEHIZA MASIDZA ..... APPLICANT  
SUING AS THE WIDOW AND PERSONAL REPRESENTATIVE OF THE LATE  
CLEMENT FESTUS MASIDZA - DECEASED**

**AND**

**ALICE NANJALA WAFULA ..... 1<sup>ST</sup> RESPONDENT  
BEATRICE NANJALA KHAOYA ..... 2<sup>ND</sup> RESPONDENT  
PATRICK NANDASABA KAMULANDA ..... 3<sup>RD</sup> RESPONDENT  
LAND REGISTRAR—BUNGOMA COUNTY ..... 4<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

- 1 By way of a chamber summons dated September 7, 2022, the applicant seeks the following orders;
  - a. That the Hon court do tax the entire bill of costs dated December 29, 2021
  - b. That the respondent to meet costs of this reference
  - c. That the Hon court do issue such orders/further relief as may deem necessary.
- 2 The application is based on four grounds shown on the face of the said application and the supporting affidavit of the applicant sworn the same date.
- 3 The said application is opposed with grounds of opposition dated October 13, 2022 as well as a replying affidavit sworn by Simiyu Makoha on even date.



## **Applicants Summary of Facts**

- 4 According to the applicant, the deputy registrar taxed party and party bill of costs dated December 29, 2021 on September 1, 2022. The applicant was aggrieved with the ruling by the taxing master and filed the present application on September 9, 2022. The applicant now wants this honourable court to re-tax the entire bill of costs on grounds that the taxing master erred in law and in fact by relying on a valuation report that was not authentic /relevant to the case and thereby awarding excessive figures/ sums to the respondents. The applicant also averred that the taxing master taxed the bill outside the rules governing such matters hence imposing a burden to the applicant. In conclusion, the applicant argued that the taxing master failed to consider and take into account the submissions filed by the applicant in her assessment.

## **Respondents Summary of Facts**

- 5 The respondents in their grounds of opposition contend that the reference was filed in court out of time without leave of the court and that the honourable court lack jurisdiction to tax the respondents bill of costs dated December 29, 2021. The respondents also repeated the same averments in the supporting affidavit stated that after the deputy registrar of this honourable court rendered himself on the said bill of costs on September 1, 2022 and explained the applicant her right to file a reference within 7 days from the said date. The respondents further urged that from the September 1, 2022, seven days' period within which she was to file reference elapsed on 8/9/2022. The respondents contend that when the present application was filed on 9/9/2022, by the time the applicant filed the present application on September 9, 2022, no leave was sought and obtained as the reference was filed out of time.
- 6 I have considered the chamber summons application, the supporting affidavit, the replying affidavit, grounds of opposition and the rival submissions by counsels. It is not in dispute that the respondents presented before the court a bill of costs for taxation dated December 29, 2021 which was taxed by the deputy registrar on September 1, 2022. Paragraph 11 of the [Advocates Remuneration Order](#) provides as follows;
- “Should any party object to the decision of the taxing officer, he may within 14 days after the decision, give notice in writing to the taxing officer of the items of taxation to which he objects.”
- 7 It is trite law that a party aggrieved from a decision or an award by a taxing officer may elect to either appeal or file a reference to the High court. Where a party elects to file a reference under paragraph 11(1) of the [Advocates Remuneration Order](#), he is required to give 14 days' notice to the taxing officer of the items of the taxation to which he objects. The other available remedy to an aggrieved party is to lodge appeal against the ruling/order. From the annexures to the supporting affidavit, the taxing officer delivered his ruling in respect of the bill of costs on September 1, 2022. The applicant elected to file the present reference seeking to set aside the entire taxation and award of the taxing master on all items and to have this honourable court do re-tax the bill of costs dated December 29, 2021 afresh.
- 8 The applicant has not cited any provisions of the [Advocates Remuneration Order](#) or any other law giving this honourable court jurisdiction to tax the party and party bill of costs the second time. It is trite that magistrates and indeed the subordinate courts in Kenya have jurisdiction to determine costs payable in cases filed before those courts. The magistrates also have jurisdiction to do taxation of bills presented before the superior courts sitting as deputy registrars under schedule vi of the [Advocates Remuneration Order](#). A party aggrieved by an order or ruling by a taxing officer can file a reference under paragraph 11 of the [Advocates Remuneration Order](#). Magistrates acting as deputy registrars



have original jurisdiction to do taxation of costs while a judge has jurisdiction to hear reference or appeals from orders emanating from those orders or rulings. What the applicant is now seeking in this application is for this Honourable court to tax the party and party bill of costs the second time. I agree with counsel for the respondent that the application is scandalous and that this court lacks jurisdiction to grant the orders sought.

9 The upshot of my finding is that the chamber summons application dated September 7, 2022 lacks merit and the same is hereby dismissed with costs to the respondent.

10 Orders accordingly.

**READ, DELIVERED AND SIGNED IN THE OPEN COURT AT BUNGOMA THIS 24<sup>TH</sup> NOVEMBER, 2022**

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of;

**Moraa H/B for Bwonchiri**

**Respondent/Advocate-absent**

Wilkister C/A

